Dear USPTO:

This is in response to the April 20, 2012 PTO Federal Register notice requesting comments on the feasibility of imposing secrecy orders on economically significant patent applications.

I would recommend against adopting such a policy for the following reasons.

** Economic security is not analogous to national security, so the use of secrecy orders is inappropriate to protect economic security.

National security-related technologies constitute a reasonably well-defined subset of patent applications. Some are designated by statute, while others have a function whose application to national security is self-evident. But the same is not true of "economic security."

According to the PTO notice of request for comments, "economic security" here means ensuring that the United States receives the first benefits of the proposed innovation. But that concern could potentially apply to *all* valid patent applications.

If PTO were to devise an Economic Security Category Review List comparable to the List used for national security-related patent applications, it would not be possible to itemize the categories that are subject to review and to exclude others -- since every conceivable category of patents could entail benefits to the United States that are worthy of protection.

In other words, the secrecy order approach that is used in the national security context would be unworkable in the "economic security" context.

** The secrecy order process is inconsistent with Congress' declared concern about protecting U.S. inventors.

In the Subcommittee report cited in the PTO Notice, Congress expressed concern that U.S. inventors were being disadvantaged by early disclosure of patent applications when it preceded their ability to raise financing and secure a market for their invention.

But if the objective is to assist U.S. inventors, then it is incongruous to impose an involuntary secrecy order upon these inventors and to penalize them for "unauthorized" disclosures of their own information.

** The "nonpublication request" procedure noted by PTO is a superior alternative to a secrecy order.

The option by which an applicant may request nonpublication of his or her patent application prior to issuance is a workable alternative that is responsive to Congressional concerns.

The inventor is likely to be better qualified than any third party to assess the economic significance of the invention, and is also likely to be best motivated to protect his or her own financial interests.

By contrast, an agency reviewer is more likely to overprotect some applications by imposing an unnecessary secrecy order (or for an unnecessarily long period), or perhaps to underprotect other applications by incorrectly evaluating them.

Therefore I believe that the voluntary option of nonpublication at the request of the inventor prior to issuance of the patent best satisfies the relevant interests.

** Finally, with respect to national security-based secrecy orders, I would recommend that the current Patent Security Category Review List be published in order to enhance the reliability of the secrecy order system.

I believe that publishing the Category Review List would add clarity and predictability to the patent process, and that it would help to protect against excessive and unwarranted controls on patent applications.

There seems to be a tendency to extend national security controls inappropriately to technologies that have potentially broad utility. For example, an old (1971) edition of the Category Review List went so far as to require review of "solar photovoltaic generators" particularly if they were more than 20% efficient. Even in the context of that time, it is hard to understand the logic of considering restrictions on disclosure of such a potentially beneficial technology.

I think that publication of the Category Review List would increase confidence that secrecy restrictions on new national security-related inventions were being employed wisely and appropriately.

Thank you for considering these comments.

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